

CSD 1160 [05/15/03]

Name, Address, Telephone No. & I.D. No.

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re LSM HOTEL, LLC,

Debtor.

BANKRUPTCY NO.

10-13024-LT11

GERMAN AMERICAN CAPITAL CORPORATION,

Moving Party

RS NO.

ASP1

LSM HOTEL, LLC; MATTHEW DINOPIA; and JAVIER
SERHAN,

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY

☒ REAL PROPERTY ☒ PERSONAL PROPERTY

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☐ 7 ☒ 11 ☐ 12 ☐ 13 was filed on July 26, 2010.
2. Procedural Status:
 - a. ☐ Name of Trustee Appointed (if any):
 - b. ☐ Name of Attorney of Record for Trustee (if any):
 - c. ☐ (Optional) Prior Filing Information:
Debtor has previously filed a Bankruptcy Petition on: _____
If applicable, the prior case was dismissed on: _____
 - d. ☐ (If Chapter 13 case): Chapter 13 Plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:
 - a. Street address of the property including county and state:
1025 La Bonita Drive, Lake San Marcos, County of San Diego, State of California 92078
 - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):
Hotel
 - c. Legal description of property is attached as Exhibit A.

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- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtor's schedules: \$3,500,000.00
- f. *Nature of Debtor's interest in the property: owner
2. ☒ The following personal property is the subject of this Motion (*describe property*):
All personal property collateral described in the written Commercial Security Agreement perfected through a UCC-1 lien, copies of which are attached as Exhibit "B".
- a. Fair market value of property as set forth in the Debtor's schedules: \$ unclear from schedules, but no more
than \$1,074,661.00
- b. Nature of Debtor's interest in the property: owner
3. *Fair market value of property according to Movant: \$ for purposes of this
Motion only, and without prejudice to any of its rights and remedies, Movant accepts Debtor's valuation
4. *Nature of Movant's interest in the property: first priority secured lender
5. *Status of Movant's loan:
- a. Balance owing on date of Order for Relief: \$ 11,680,082.73
- b. Amount of monthly payment: \$ 106,746.00 (varies based on days
in month)
- c. Date of last payment: 1/28/10
- d. If real property,
- i. Date of default: 2/28/2010
- ii. Notice of Default recorded on: 6/30/10
- iii. Notice of Sale published on: n/a
- iv. Foreclosure sale currently scheduled for: n/a
- e. If personal property, non-divisible,
- i. Pre-petition default: \$ inclusive of 5(a) No. of months: N/A
- ii. Post-petition default: \$ No. of months: N/A
6. (If Chapter 13 Case, state the following:)
- a. Date of post-petition default: _____
- b. Amount of post-petition default: \$ _____
7. Encumbrances:
- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: GACC	11,018,954.00	\$661,127.98	7mo.	275,473.60	80 days*
2nd: Javier Serhan	4,000,000.00	unknown		unknown	
3rd:					
4th:					
Totals for all Liens:	\$ 15,018,954.00	\$		\$ 275,473.60	

*arrearages through 10/14/10 hearing date

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant: at least \$96,820 in tax liens as stated on Debtor's Schedule E
- ☐ See attached page, if necessary. (public records show \$139,106.06 in unpaid taxes and assessments)

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8. Relief from the automatic stay should be granted because:

- a. ☒ Movant's interest in the property described above is not adequately protected.
- b. ☒ Debtor has no equity in the ☒ real property ☒ personal property described above and such property is not necessary to an effective reorganization.
- c. ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since entry of the order for relief in this case, and
- i. the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
- ii. the Debtor/Trustee has
- (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
- (2) ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- d. ☒ *Other cause exists as follows (*specify*): ☐ See attached page.
- Debtor's bad faith as described in the concurrently filed Memorandum of Points and Authorities

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following: Declarations of Joan Kramer and Andrew S. Pauly, Esq.

1. ☐ Other relevant evidence:
2. ☒ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☒ Other: 3. relief from stay to non-judicially foreclose and obtain appointment of receiver in state court pending the foreclosure; 4. the 14 day stay prescribed by Bankruptcy Code section 4001(a)(3) be waived; 5. the Order be binding on any successors, transferees or assignees of the Debtor; and 6. the Order be binding in any bankruptcy case commenced by or against the Debtor and by or against any successors, transferees or assignees of the Debtor for a period of 180 days.

Dated: September 13, 2010

/s/ ANDREW S. PAULY

[Attorney for] Movant
ANDREW S. PAULY

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).

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